

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

DAVID GARLAND ATWOOD, II

PLAINTIFF

V.

CIVIL ACTION NO.1:12-CV-168-SA-DAS

MIKE CHENEY, et al.

DEFENDANTS

ORDER

Following a mistrial in this case, the Plaintiff filed several motions. First, the Plaintiff requests a hearing on imposing sanctions against two witnesses that failed to appear for pretrial depositions [303, 304, 305]. Second, the Plaintiff requests that the Court provide a portion of the transcript from the mistrial to him for free [307]. Third, the Plaintiff renews his request for trial witness subpoenas, and a subpoena to permit inspection of private property [308]. Fourth and finally, the Plaintiff requests a subpoena for his cell phone records [309]. The retrial of this case is now scheduled for July 17, 2017.

Sanction Hearing

As to the sanctions hearing, the Court finds the Plaintiff's request well taken, and it is granted. According to the Plaintiff, and supported by the record, two duly subpoenaed witnesses, Kade Atwood and Emmett Atwood, both refused to appear for depositions on two separate occasions. The Plaintiff now requests that the Court sanction these two witnesses by ordering them to reimburse the Plaintiff for the costs of the failed deposition attempts. The Court will convene a hearing on this issue on Tuesday, July 18, 2017 at 9:30 in the morning. The Court orders the Clerk of Court to issue subpoenas, upon the Plaintiff's request, for the appearance of Kade Atwood and Emmett Atwood at this hearing. The Court commands Kade Atwood and Emmett Atwood to appear at said hearing or face contempt charges, fines, or other sanctions.

Trial Transcript

The Plaintiff next requests a free copy of the transcript from the mistrial because he is proceeding *in forma pauperis*. Although the Court is not under any obligation to provide a transcript to the Plaintiff in this case, a transcript of the mistrial, which notably lasted only one day, is necessary both for the Court's own use and to complete the record. For this reason, the Court finds the Plaintiff's request for a transcript well taken and it is granted. The Court Reporter is directed to provide a transcript to the Court and to the Plaintiff by June 26, 2017.

Trial Witness Subpoenas

There being no objection from the Defendant, the Court grants the Plaintiff's request for trial witness subpoenas. The Clerk of Court is directed to issue subpoenas for the following witnesses upon the Plaintiff's request: Rosalind Jordan, Martin Pace, Tim Nail, Teresa Lyle, Paul Lyle, Jan Hyland Daigre, Mike Traxler, Billy Joe Higgins, Todd Dykes, and Ronnie Stewart.

Premises Inspection Subpoena

Finally, the Plaintiff renews his request to permit inspection of private property, specifically the lake house owned by Emmett Atwood. The Court previously denied this request. *See* [287]. The Plaintiff has not raised any new arguments regarding the relevance or necessity of inspecting the lake house property, or how the proposed inspection relates to the substantive issues of this case. For this reason and for all the reasons stated in the Court's previous Order this request is denied. However, as previously stated, if the appropriate foundation is laid at trial, the Plaintiff will be permitted to testify in the narrative, and to question other witnesses, as to first-hand knowledge of the location, the particularities of the place, distances, and view, and be permitted to utilize sketches or other admitted exhibits to otherwise describe the location subject to cross-examination.

Cell Phone Records Subpoena

Finally, for the reasons stated in the Plaintiff's motion, the Plaintiff's request for a subpoena for his cell phone records is well taken, and is therefore granted.

Conclusion

For all the reasons outlined above the Court orders the following:

The Plaintiff's Motion for Hearing [303] is GRANTED. The Court will convene a hearing on the issue of sanctions against Emmett Atwood and Kade Atwood on July 18, 2017 at 9:30 in the morning. This hearing will be set by separate notice. The Clerk of Court shall issue subpoenas, upon the Plaintiff's request, for the appearance of Kade Atwood and Emmett Atwood at this hearing.

The Plaintiff's Motion for a Transcript [307] is GRANTED. The Court Reporter shall deliver a transcript of the previously conducted mistrial to the Plaintiff and the Court by June 26, 2017.

The Plaintiff's Motion for Subpoenas [308] is GRANTED in part and DENIED in part. The Plaintiff's request for witness subpoenas is GRANTED. The Clerk of Court shall issue subpoenas for the following witnesses upon the Plaintiff's request: Rosalind Jordan, Martin Pace, Tim Nail, Teresa Lyle, Paul Lyle, Jan Hyland Daigre, Mike Traxler, Billy Joe Higgins, Todd Dykes, and Ronnie Stewart. The Plaintiff's request for a subpoena to permit inspection of the lake house property is DENIED.

The Plaintiff's Motion for a Subpoena for cell phone records [309] is GRANTED. The Clerk of Court shall issue the subpoena upon the Plaintiff's request.

SO ORDERED on this, the 14th day of June, 2017.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE